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**BY HAND DELIVERY**

Marlene H. Dortch, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

RECEIVED

OCT 31 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Statement for the Record  
MB Docket No. 02-130  
RM-10438  
Des Moines, Iowa

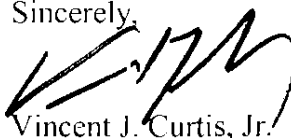
Dear Ms. Dortch:

On behalf of Caroline K. Powley, transmitted herewith is an original and four copies of a "Statement for the Record".

Please date-stamp the enclosed copy and return it to the undersigned

Should there be any questions regarding this filing, please contact the undersigned counsel.

Sincerely,



Vincent J. Curtis, Jr.

Harry F. Cole

Counsel to Caroline K. Powley

VJC/st

Enclosure

cc: As shown on the Certificate of Service (with enclosure)

Federal Communications Commission

This proceeding began with the submission of six mutually exclusive applications for a construction permit for analog television channel 69 at Des Moines, Iowa in early 1996. In July, 2000, the six applicants (collectively, “the Des Moines Applicants”) submitted a Joint Request for Approval of Universal Settlement seeking Commission approval of an agreement among them pursuant to which Ms. Powley’s application would be attended and granted, and the other applications would be dismissed. The proposed amendment to Ms. Powley’s application was necessitated by the Commission’s intervening decision to vacate Channels 60-69 and to require applicants for those channels to propose alternate channels outside that portion of the television band. Ms. Powley’s amendment specified use of NTSC Channel 56.

Subsequently, however, the Commission also decided to remove NTSC operations from Channels 52-59. It therefore required proponents of NTSC operations on those channels either to (a) locate an available NTSC or DTV channel in the core television spectrum (*i.e.*, Channels 2 - 51) or (b) locate an available DTV channel within the Channel 52-59 group.

In the interest of preserving their status as pending and "cut-off" applicants, the Des Moines Applicants filed a petition for rule making proposing that Channel 56 be allotted to Des Moines for DTV use. In their initial joint Petition for Rulemaking, filed in March, 2002, the Des Moines Applicants advised the Commission that Ms. Powley would amend her application to specify the revised facilities and would construct the facility if authorized.

Since the filing of the Petition, however, the Des Moines Applicants have disagreed among themselves with respect to the effect of the dramatic change -- from NTSC operation to DTV-only operation -- which was forced on the parties by the Commission subsequent to their universal agreement. As the Commission was originally notified, the universal agreement called for Ms. Powley to obtain an NTSC authorization on Channel 56. As a result of the Commission's change in licensing policies governing Channel 56, however -- and through no fault of Ms. Powley's -- the originally anticipated goal of the Des Moines Applicants cannot be achieved. Moreover, the authorization which *is* now available -- *i.e.*, a permit for a DTV-only station -- is without question of substantially lesser value than the authorization which the parties initially sought and reasonably expected.

Ms. Powley has therefore initiated efforts to reach a renegotiation of the terms of the universal agreement. The goal is to preserve the essential agreement among the parties, **but**

adjust the consideration to be paid in light of the substantial change in the nature of the authorization which is being sought.<sup>1</sup>

Ms. Powley is hopeful that her efforts will be successful. However, Ms. Powley cannot at this time guarantee such success.

The Report and Order ("R&O"), DA 02-2315, released September 24, 2002 in the above-captioned proceeding, allotted DTV Channel 56 to Des Moines, and ordered that Ms. Powley or "another" of the Des Moines applicants must file an application proposing use of DTV Channel 56 at Des Moines. Ms. Powley hereby notifies the Commission that as matters presently stand, she does intend to file such an application pursuant to the express order in the R&O. However, in view of the presently unresolved disagreement among some of the Des Moines applicants concerning reformulation of their original understanding in light of the changed circumstances which made implementation of that original understanding impossible, Ms. Powley cannot guarantee that she will be the only one of the Des Moines applicants to file such an application.<sup>2</sup>

Since the R&O appeared to contemplate that only one such application would be filed, Ms. Powley believes that it is appropriate to alert the Commission at this time to the possibility that more than one application might be filed.

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<sup>1</sup> The possibility of some shift in the agreement among the Des Moines Applicants was reflected in the Joint Comments filed on July 29, 2002 by the applicants. In those Joint Comments the parties indicated that their then-present intention was that Ms. Powley or one of the other Des Moines Applicants would be the ultimate applicant for DTV Channel 56.

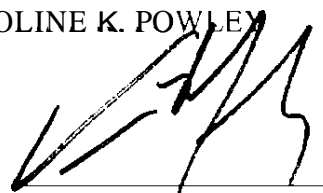
Indeed, if the Des Moines Applicants have not reached universal agreement concerning this matter prior to December 23, 2002 (the deadline for applications specified in the R&O), it will be incumbent on any Des Moines Applicant who wishes to preserve the right to participate in a closed Commission-conducted auction for the channel to file an application by that date.

In the event that more than one application is filed, Ms. Powley submits that the resulting mutual exclusivity can and should be resolved through a closed auction among the applicants. Since (as is clearly reflected in the R&O) the universe of applicants eligible to apply for DTV Channel 56 in Des Moines is limited to the six pending Des Moines applicants, such an auction would not be cumbersome and could be completed expeditiously. Of course, should only one application for DTV Channel 56 be filed by any of the Des Moines applicants on or before the deadline set out in the R&O, that application can be processed and granted promptly without further ado.

Respectfully submitted,

CAROLINE K. POWLEY

By:



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Her attorneys

October 31, 2002  
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## CERTIFICATE OF SERVICE

I, Suzanne Thompson, a secretary in the law ~~firm~~ of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of a "Statement for the Record" was sent this 31<sup>st</sup> day of October 2002, via first class U.S. Mail, postage prepaid, or via hand delivery, as indicated, to the following:

Ms. Pam Blumenthal \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 2-A162  
Washington, DC 20554 (\*via hand delivery)

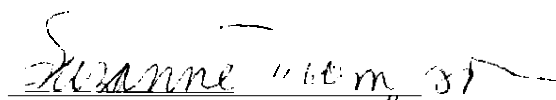
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